[APPELLATE CRIMINAL JURISDICTION]

MURRAY-AYNSLEY, J.

July 22, 1938.

ABDUL WAHAB v. PUBLIC PROSECUTOR.

(PERAK MAGISTRATE'S CRIMINAL APPEAL No. 32 of 1938)

Penal Code, s. 406—criminal breach of trust—money received by accused to which he has no right to receive.

When money is given to a person in his official capacity, whether he has any right to take it or not, he is entrusted with it within the meaning of Section 406 of the Penal Code.

MAGISTRATE'S CRIMINAL APPEAL.

Taun Haji Abdul Wahab for appellant.

R. M. Cluer, Deputy Public Prosecutor, for respondent.

Cur. Adv. Vult.

Murray-Aynsley, J.—In this case the Appellant was convicted of four charges under Section 406 of the Penal Code.

The facts are quite simple. The Appellant was a Forest Ranger and as such collected the sums in question. It appears that the Appellant had no right whatever to receive the sums in question which were for matters, viz compensation for encroachments made by those persons paying them, for which the department would not have taken money. Having so taken the money the Appellant appropriated it. Now although on the facts it is possible that the Appellant might have been convicted of obtaining the money by false pretences or of some other offence, I am of opinion that when money is given to any person in his official capacity, whether he has any right to take it or not, he is entrusted with it within the meaning of the section.

The appeal must therefore be dismissed.

Appeal dismissed.

[APPELLATE CIVIL JURISDICTION]

MURRAY-AYNSLEY, J.

October 10, 1938.

HAJI OSMAN v. NG AH SIEW.

(PERAK MAGISTRATE'S CIVIL APPEAL No. 30 of 1938).

I. O. U's. and other document—execution by illiterate persons—principles on which documents should be dealt with by Court.

Principles on which documents alleged to have been executed by illiterate persons should be dealt with by a Court considered.

MAGISTRATE'S CIVIL APPEAL.

This was a claim on an I.O.U. The defence was that the alleged I.O.U. was forged. The Defendant was illiterate and the document was signed by means of a thumb mark which was admittedly that of the Defendant. The Defendant however alleged that some years previously to the alleged date of the I.O.U., he gave powers of attorney to the Plaintiff, also signed with a thumb-mark, and at that time made a thumb-mark on a blank piece of paper which was subsequently without authority converted into the I.O.U. The Magistrate gave judgment for the Plaintiff and the Defendant appealed.

This case is reported only on the point as to the principles on which documents alleged to have been executed by illiterate persons should be dealt with by a Court.

George Terrell for Appellant—Defendant.

J. L. Woods, for Respondent—Plantiff.

Murray-Aynsley, J.—

His Lordship dealt with the facts and continued:—

The guiding principle in dealing with cases of this kind is that great caution should be exercised in admitting documents alleged to have been executed by illiterate persons. Those who obtain I.O.U's. and other documents can and should have execution witnessed by persons of such a character that further dispute is impossible. If they do not do this they have only themselves to blame. Where there is serious ground for suspicion such a document should not be accepted. In this case examination of the documents produced and reading the evidence must produce a very strong suspicion. The Plaintiff has to prove his case and in view of these matters I do not consider that he has done so. The appeal must be allowed and judgment entered for the Defendant-Appellant with costs here and below.

Appeal allowed with costs.

[ORIGINAL CIVIL JURISDICTION]

MURRAY-AYNSLEY, J.

July 22, 1938.

TASIR BIN ITAM DRIS

v.

JAMILA AND OTHERS.

(PERAK CIVIL SUIT No. 118 of 1937)

Limitation Enactment, Article 92—specific performance on happening of a contingency—no notice of refusal of performance.

A contract was to be performed upon the happening of a contingency. The contingency happened more than three years prior to the date of institution of the suit. There was no notice of refusal of performance.

Held, that the word "date" in Article 92 of the Schedule to the Limitation Enactment (Cap. 18) does not